

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA : **CRIMINAL NO.** **09- 676**
v. : **DATE FILED:** **10-15-09**
DIANE A. SMITH : **VIOLATIONS:**
: **18 U.S.C. § 1516 (obstruction of a federal**
: **audit – 1 count)**

INFORMATION

COUNT ONE

THE UNITED STATES ATTORNEY CHARGES THAT:

At all times relevant to this information:

1. Defendant DIANE A. SMITH was a registered nurse and certified nurse practitioner specializing in urinary incontinence care who operated URO Healthcare LLC, a sole proprietorship based in Newtown Square, Pennsylvania.
2. The United States Department of Health and Human Services (“HHS”) was a department of the United States government with responsibilities under federal law for the funding, administration and supervision of certain health care programs, including the Medicare program. Medicare was a federal health insurance program that provided coverage for eligible persons, known as “beneficiaries,” who were primarily individuals over the age of 65 or disabled.
3. The Centers for Medicare and Medicaid Services (“CMS”) was an agency of HHS that contracted with various contractors to administer the Medicare program. CMS contracted with Highmark Medicare Services (“Highmark”), to process Medicare reimbursement claims, and Highmark’s responsibilities included reviewing claims for medical necessity. CMS also contracted with

EDS to perform specific Medicare program integrity functions, including reviewing the accuracy and justification of all services reimbursed by the program.

4. Defendant SMITH's patients included Medicare beneficiaries residing in long-term care facilities, and she directly billed for her services to Medicare using an individual Medicare provider number.

5. For each of the calendar years 2003 through 2006, defendant SMITH received more than \$100,000 in payments from the Medicare program as reimbursement for services that she claimed to have provided to Medicare beneficiaries.

6. From 2003 to 2006, Highmark conducted medical reviews of records of some Medicare beneficiaries to whom defendant SMITH provided urinary incontinence services, and, after the last of these reviews, Highmark referred defendant SMITH to EDS.

7. Starting in approximately November 2006, EDS performed an audit of 21 beneficiaries' records from four long-term care facilities where defendant SMITH provided urinary incontinence services to residents. The beneficiaries' records contained over 500 services billed by defendant SMITH on 198 dates of service in 2005 and 2006.

8. EDS obtained copies of the beneficiaries' records directly from the four facilities. In addition, by letter dated January 11, 2007, EDS asked defendant SMITH to provide "photocopies of the original office medical records for services rendered" to these 21 beneficiaries within 15 days.

9. On January 22, 2007, defendant SMITH sent records to EDS along with a cover letter stating, "Enclosed are the records you requested."

10. EDS found numerous differences between the beneficiaries' records that it obtained directly from the facilities and the records that defendant SMITH provided, and EDS referred

defendant SMITH to the Office of Inspector General (“OIG”) for HHS.

11. OIG determined that, for 194 out of the 198 dates of service covered by the EDS audit, defendant SMITH provided EDS with either (a) copies of the original records that defendant SMITH had altered, or (b) entirely new records that defendant SMITH created but that differed completely from the original records, with discrepancies in both form and content.

12. The fraudulent records that defendant SMITH provided included notations about every aspect of the beneficiaries’ care – including fictitious medical findings, progress notes and test results – that did not appear in the original charts or contradicted the information in the original records.

13. Defendant SMITH intended to deceive and defraud EDS by representing that the fraudulent, falsified and altered records that she sent to EDS on January 22, 2007 were the “photocopies of the original office medical records for services rendered” that EDS requested on January 11, 2007.

14. On or about January 22, 2007, in the Eastern District of Pennsylvania, defendant

DIANE A. SMITH,

with intent to deceive and defraud the Center for Medicare and Medicaid Services, an agency of the United States Department of Health and Human Services responsible for administering the Medicare program, endeavored to influence, obstruct and impede auditors who were employed on a contractual basis to perform audits for and on behalf of the United States as part of the Medicare program, in the performance of the auditors’ official duties relating to the defendant’s receipt of annual payments from

the United States exceeding \$100,000 as a contracting nurse and certified nurse practitioner in the Medicare program.

In violation of Title 18, United States Code, Section 1516.

/s/ Michael L. Levy
MICHAEL L. LEVY
United States Attorney